



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
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For: PACKING

: Office of the Director
: DECISION ON PETITION
: UNDER 37 CFR 1.181
:
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This is a decision on the Request for Reconsideration filed June 11, 2001, of the decision mailed May 10, 2001.

The petition is DISMISSED.

A review of the file record reveals that a continuation application was filed November 28, 2000, without a preliminary amendment, although the Transmittal form indicated that a preliminary amendment was enclosed. A final Office Action was issued December 14, 2000. An amendment was filed in the mailroom of the USPTO on December 21, 2000, after the final Office Action had been issued, and was thus treated as an amendment after final rejection, and refused entry in an Advisory Action mailed January 9, 2001.

Applicant filed a petition under 37 CFR 1.181 on January 26, 2001 to enter the preliminary amendment filed December 21, 2000. That petition was denied in a decision mailed May 10, 2001.

The instant petition raises two points: 1) applicant believed that the examiner would wait for the preliminary amendment so there was no reason to request a suspension under 37 CFR 1.53 (d) and 2) the examiner had a choice to not act on the application and decided not to exercise it, resulting in unfair treatment to applicant.

These two points do not raise any new issues that would overcome the prior discussion of May 10, 2001. Furthermore, in view of the Continuing Prosecution Application filed June 14, 2001, the amendment filed December 21, 2000 has been entered. Therefore, the issue of entry of the amendment is moot.

Since an Office Action has been mailed on November 29, 2001, the application is being returned to storage to await applicant's response.

Gerald Goldberg
Director, TC 3600